

TRULINCS 22682509 - CONLEY, PHILLIP W - Unit: MIL-E-B

FROM: 22682509
TO: Juzwik, Tina
SUBJECT: Drake
DATE: 12/19/2023 09:51:13 AM

United States District Court
Western District of Virginia

United States of America
v
Gerald Leonard Drake

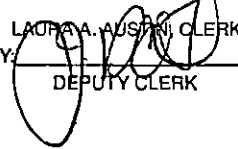
Case No: DVA W522 CR:000008-001

Motion of Sentence Modification
18USC 3582 (c)(1)(a)

CLERK'S OFFICE U.S. DISTRICT COURT
AT HARRISONBURG, VA

FILED

JAN 02 2024

LAURA A. AUSPIL CLERK
BY: 
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Comes now the defendant Gerald Leonard Drake with a motion for sentence reduction and modification pursuant to United States Sentencing Commission statutes 18 USC 3582 (c)(1)(a) and USC 18 3582(c)(2).

BACKGROUND

On April 17, 2023 defendant Gerald Leonard Drake entered a plea agreement in the above referenced case. The defendant plead guilty to counts 4 and 5 of the indictment filed September 14, 2022. Specifically the counts are in violation of United States code section USC 26 5841, 5861(d), 5871 {possession of a destructive device} and USC 18 2261 A(2), 2261(b)(3) {stalking} respectively.

On August 17, 2023 the defendant was sentenced by the western district court to serve a sentence of one hundred and eight [108] months of imprisonment pursuant to the plea agreement signed in this case and discussed above. The defendant is, presently incarcerated at Federal Corrections Institute Milan in Milan Michigan.

UNITED STATES SENTENCING COMMISSION AMENDMENT 821

As part of the United States Sentencing Commissions ongoing review and modification of sentencing guidelines in August of 2023 the commission voted to retroactively adopt Amendment 821 as part of USC 18 3582(c)(2). Amendment 821 provides defendants sentenced prior to the adaptation of the amendment retroactive resentencing affective February 1, 2024. The sentence statute states;

"In the case of a defendant sentenced to a term of imprisonment based on a range that has subsequently been lowered by the commission... upon motion of the defendant the court may reduce the term of imprisonment after consideration and application of mitigating factors set forth in section 3553(a) to the extent that they are applicable to the defendant. The court as stated by the statute may not rule on motion consideration prior to February 1, 2024.

3553(a) FACTORS

While many allegations held forth in the defendants indictment by the grand jury are violent and would forbid release due to section 3553(a) the court dismissed these counts. A closer look by the court will show that the counts plead to and discussed earlier are non violent offences and are not subject to 3553(a). In addition to this the court will take note as evidenced in defendant Drakes Pre Sentence Investigation that he has no prior criminal history and no history of 3553(a) factors to be, considered by the court.

Defendant is a father and committed grandfather, he is extremely remorseful for his out of character actions in 2017 and is looking forward to rehabilitation and re entry to society. Defendant Drake is grateful to the court and to the sentencing commission for this opportunity for early release.

RAMIFICATIONS OF AMENDMENT 821

Defendants who are sentenced without criminal history such as is the case with defendant Drake are now subject to the amendments new "zero criminal history category" as such they are eligible for a sentence reduction pursuant to the new modified guidelines. Defendant Drake was sentenced based on the lowest category at the time [category 1] on February 1,

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2024 he will be eligible for consideration of a sentence reduction to a category 0 pursuant to the stipulations contained in amendment 821.

PRAYER FOR RELIEF

Defendant comes before the court with the foregoing motion for relief pursuant to US 3582 and the amendments contained in Amendment 821. Defendant respectfully asks the court to grant relief under USC 18 3582(c)(2) in the form of a sentence reduction pursuant to the guidelines modified by the United States Sentencing commissions August 2023 adoption of amendment 821. Defendant has no prior criminal history that would disqualify him for consideration and poses no threat to society pursuant under section 3553(a) factors and as such qualifies for a reduction by the statute.

Defendant asks the court rule and grant him relief post February 2024 as per the statute and its discussed amendment.

Respectfully Submitted,

 12-22-2023

Gerald Leonard Drake
PRO-SE Defendant
FCI MILAN
Post Office Box 1000
Milan, Mi 44380